

Part 4

Obligation, Repudiation, Excused Performance

70A-2a-401 Insecurity -- Adequate assurance of performance.

- (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.
- (2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which he has not already received the agreed return.
- (3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.
- (4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.
- (5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Enacted by Chapter 197, 1990 General Session

70A-2a-402 Anticipatory repudiation.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

- (1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;
- (2) make demand pursuant to Section 70A-2a-401 and await assurance of future performance adequate under the circumstances of the particular case; or
- (3) resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods as provided in Section 70A-2a-524.

Enacted by Chapter 197, 1990 General Session

70A-2a-403 Retraction of anticipatory repudiation.

- (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.
- (2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 70A-2a-401.

- (3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Enacted by Chapter 197, 1990 General Session

70A-2a-404 Substituted performance.

- (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.
- (2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:
 - (a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and
 - (b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Enacted by Chapter 197, 1990 General Session

70A-2a-405 Excused performance.

Subject to Section 70A-2a-404 on substituted performance, the following rules apply:

- (1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with Subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.
- (2) If the causes mentioned in Subsection (1) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers, but at his option, may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.
- (3) The lessor seasonably shall notify the lessee, and in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under Subsection (2), of the estimated quota thus made available for the lessee.

Enacted by Chapter 197, 1990 General Session

70A-2a-406 Procedure on excused performance.

- (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 70A-2a-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired as provided in Section 70A-2a-510:
 - (a) terminate the lease contract as provided in Subsection 70A-2a-505(2); or

- (b) except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.
- (2) If, after receipt of a notification from the lessor under Section 70A-2a-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

Enacted by Chapter 197, 1990 General Session

70A-2a-407 Irrevocable promises -- Finance leases.

- (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.
- (2) A promise that has become irrevocable and independent under Subsection (1):
 - (a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and
 - (b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.
- (3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

Amended by Chapter 237, 1993 General Session